IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11344 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI SOHANLAL SHAH ALIAS BABUBHAI MORWAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11344 of 2002

MR SHAKEEL A QURESHI for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/04/2003

ORAL JUDGEMENT

1. Leave to correct the name of the detenu.

2. By this petition under Article 226 of the

Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 2.9.2002 passed against him by the District Magistrate, Surat in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The detenu has been branded as "Chronic bootlegger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in two different offences. The first offence registered against the petitioner detenu on 11.3.2002 is Pro. CR No.502/2002 registered at Prohibition Station, Bardoli for the offences punishable under Sections 66B, 65AE, 116(1)(B) and 81 of the Bombay Prohibition Act. The second offence registered against the petitioner detenu on 11.3.2002 is Pro.CR No. 113/2002 registered at Palasana Police Station for the offences punishable under Sections 66(1)(B), 65(1)(E), 81, 83, 116(B) of the Bombay Prohibition Act. In the first offence Indian Made Foreign Liquor worth Rs. 11,95,200/ was seized and in the second offence, Indian Made Foreign Liquor worth Rs.7,38,720/ was recovered.

4. It is submitted by ld. counsel Mr. Qureshi that though two offences are registered, in reality, the same is solitary case. The say of ld. counsel Mr. Qureshi is that the order of detention is bad-in-law as the order of detention is passed at a belated stage and is an after thought. Though the legality and validity of the order is challenged on number of grounds, but it is submitted that the detaining authority has passed the order in the month of September i.e. practically after 5 to 6 months from the date of alleged commission of offence. It is also pointed out by ld. counsel Mr. Qureshi that the statements of some unnamed witnesses have been recorded by the Sponsoring Agency on 28.7.2002, the statements were verified by Sub Divisional Magistrate, Vyara on 27.8.2002. The detaining authority namely the District Magistrate, Surat has never verified the statements of unnamed witnesses. There is nothing on record to show whereby this Court can legitimately infer that on which date papers were made available to the District Magistrate for applying his mind. Considering the distance between Vyara and Sruat and the fact that the District Magistrate himself has not verified the statements recorded by the authority, it cannot be said that such statements have been validly recorded. It is

accepted proposition of law that mere registration of criminal offence under the provisions of The Bombay Prohibition Act, by itself would not give rise to any cause for detaining authority to pass harsh order of detention.

5. The petitioner has challenged the legality and validity of the order of detention on number of grounds mentioned in the memo of the petitioner. However, the ld. counsel Mr. Qureshi for the petitioner, has mainly focussed his arguments on the ground that the alleged activities of the petitioner mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the District Magistrate, Surat has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

6. The subjective satisfaction recorded by the authority says that the activities of the petitioner affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. Mr. Qureshi has taken this Court through the grounds of detention and relevant record available and has submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 02.09.2002 passed by the District Magistrate, Surat is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

2-04-2003 [C. K.BUCH, J]

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